IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1370 of 2006

Date of decision 5.7.2007

Executive Engineer, HPSEB, Mandi Petitioner

Vs.

Ram Parkash and another Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr. Shrawan Dogra, Advocate.

For the Respondent : Mr.Surinder Saklani, for respondent No.1.

Rajiv Sharma,J.

A challenge has been laid to the award made by the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala dated 17.7.2006 in Reference No.112/2002. The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala:

> " Whether the retrenchment of Sh.Ram Parkash son of Sh.Jawala Singh, VPO Simas, Tehsil Ladbhoral District Mandi, H.P. w.e.f. 25.4.1993, 24.7.1995 and then finally termination w.e.f. August, 2000 without complying the Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 is legal? If not, what relief of service benefits and amount of compensation Sh.Ram Parkash is entitled to?"

In sequel to the reference made by the State Government the workman had filed statement of claim before the Labour Court, alleging therein that he has been retrenched with effect from 15.8.2001 in violation

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[1] Whether reporter of local papers are allowed to see the judgment ? No

of clause 14(2) of the Standing Orders framed by the Board. It has further been stated that workmen, namely, Gulab Singh, Mangat Ram, Om Parkash, Naval Kishore, Pankaj Raj, Bhawan Kumar, Yog Raj, Shayam Singh and Biri Singh were juniors to him but were retained at the time of his retrenchment on 15.8.2001. The Management had filed reply to the statement of claim. The Management had admitted in its reply that the workman had worked with the Board with effect from 25.4.1992 to 18.4.2001. The Management had admitted in para 3 of its reply that the persons juniors to him were retained. The Labour Court had passed the Award on 17.7.2006. The Labour Court had directed the re-engagement of the workman but had denied back wages to him.

Mr. Shrawan Dogra, learned counsel for the petitioner had strenuously argued that since the workman had not completed 240 days preceding twelve calendar months from his retrenchment he was not entitled to the benefit of Section 25-F of the Industrial Disputes Act, 1947 and his case was not covered under the certified standing orders framed by the Board. Mr.Surinder Saklani learned counsel appearing for the respondent had supported the Award dated 17.7.2006.

I have heard learned counsel for the parties and have also gone through the record of the case carefully.

The workman had appeared as PW-1 before the Labour Court and on behalf of the Management Het Singh had appeared as RW-1. The Labour Court had held that the workman was entitled to 10 days notice as per clause 14(2) of the Certified Standing Orders at the time of his effecting retrenchment. RW-1 had admitted in his cross-examination the issuance of seniority list of daily wagers in Electrical Division, HPSEB where the name of one Dila Ram son of Pinja Ram is mentioned at Sr.No.33 and his date of appointment is 25.9.1993. The seniority list was produced before the Labour Court and marked as Ex.P-9. The date of

initial engagement of the workman as per the man days chart filed with this petition is 25.4.1992. Similarly the date of engagement of Gulab Singh as per Ex.P-9 is 10.11.1992. The seniority list Ex.P-9 and statement of RW-1 were produced by the learned counsel appearing on behalf of the workman.

Shri Shrawan Dogra had strenuously argued that the workman was not entitled to 10 days notice as per the certified Standing Orders framed by the Board since the same were not applicable on the date of the retrenchment i.e. 15.8.2001. He further contended that the workman could seek the protection of Section 25-F of the Industrial Disputes Act, 1947 only if he had completed 240 days preceding his retrenchment. It is evident from the man days chart that he had completed only 51 days in the year 2001 and had completed only 89 days in the year 2000. Thus the workman was not entitled to the protection under Section 25-F of the Act ibid. Mr. Saklani had contended that assuming that his client had not completed 240 days but since persons juniors to his client whose detail have been given in para 3 of the statement of claim were retained the workman was entitled to protection under Section 25-G of the Act ibid. The Board had admitted in para 3 that persons juniors to the workman were retained at the time of retrenchment i.e. 15.8.2001. Het Singh while appearing as RW-1 had admitted in his cross-examination that one Dila Ram who was junior to the respondent had been retained. The Apex Court has held in **Central Bank of India vs. S.Satyam and others,** (1996) 5 SCC 419 that it is not necessary for the workman to complete 240 days to get protection under Section 25-G. Their Lordships have held as under:

> "The plain language of Section 25-H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning

> of 'retrenchment' given in Section 2(oo). Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman…. Who has been in continuous service for not less than one year". It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments, while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F."

The upshot of the above discussion is that the findings recorded by the Labour Court that the workman was entitled to get the protection of Section 14(2) of the Certified Standing Orders framed by the Board is set aside. But the workman is held entitled to reinstatement since persons juniors to him were retained at the time of his retrenchment as discussed above. Therefore the petitioner Board is directed to reinstate the workman but without back wages within a period of four weeks from today.

For the foregoing reasons this petition is disposed of with no order as to costs.

July 5, 2007(g) **(Rajiv Sharma), J.**